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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
**EASTERN DIVISION – RIVERSIDE**

18 FAOUR ABDALLAH FRAIHAT *et*  
19 *al.*,

20 Plaintiffs,

21 v.

22 U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT *et al.*,

23 Defendants.

Case No. 5:19-cv-1546-JGB-SHK

**BRIEF OF AMICI CURIAE**  
**PUBLIC HEALTH EXPERTS**

Date: April 9, 2020

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2 the University of Colorado, Anschutz Medical Campus. Dr. Cervantes has conducted  
3 extensive research and published on topics that highlight the worse outcomes faced by  
4 undocumented immigrants with poor access to care and has worked with key health policy  
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1 Dr. Mark Earnest is a Professor of Medicine at the University of Colorado School of  
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1 in Oakland, California, her research and advocacy work focuses on the protection of human  
2 rights in times of complex humanitarian crisis particularly for vulnerable populations. She  
3 teaches on global health ethics and health and human rights, with a focus on torture and the  
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1 health, immigration status as a health barrier, opioid use disorder and leveraging the  
2 emergency department to address upstream factors affecting the health and stability of  
3 vulnerable populations.

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1            *Amici* seek to inform this Court about the direct injuries to personal health that  
2 Plaintiffs are likely to suffer absent the requested relief. Additionally, *Amici* seek to inform  
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1 with underlying health problems such as—but not limited to—weakened immune systems,  
2 diabetes, and diseases of the lungs, kidneys, heart, and liver.<sup>12</sup>

3       Because of its high mortality rate and transmissibility, both the World Health  
4 Organization (WHO) and the Centers for Disease Control & Prevention (CDC) consider  
5 COVID-19 a public health emergency.<sup>13</sup> To contain the disease, public bodies across the  
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1 COVID-19, but do not fit that unstated criteria. This creates a high risk that individuals with  
2 COVID-19 will be introduced into the general population. Lastly, vaguely providing that  
3 social distancing should be maximized is inadequate. Per the CDC, *everyone* should avoid  
4 contact with others—full stop.<sup>26</sup> If conditions at a detention facility do not permit adequate  
5 social distancing measures to be taken by all detained persons, regardless of their cohort,  
6 the facility should not house detained persons.

7         In short, ICE’s guidance emphasizes testing of patients with known epidemiologic  
8 risk factors (travel, contact with known cases, etc.) as well as symptoms.<sup>27</sup> This strategy will  
9 not prevent outbreaks in ICE detention centers, as a significant proportion of COVID-19

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1 The April 4, 2020 supplemental guidance provided by ICE does nothing to cure these  
2 deficiencies. *See Angel Alejandro Heredia Mons et al. v. Kevin K. Mcaleenan*, No. 1:19-  
3 cv-1593-JEB, ECF N 68.9( )-92cT1.9( )-13.9acv-1 (D2(a)3.( ND)2( )-9(N)2C.)-9(N41.9( )1.9( )

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1           The same is true of the Declaration of Captain Jennifer Moon. (Dkt. No. 95-11 at 3-  
2 4.) Indeed, Captain Moon’s declaration simply rehashes the same description of the

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1 or the American Correctional Association (ACA). But there is no consequence for any of  
2 the private companies that provide health care in these settings to lose that voluntary  
3 accreditation. Additionally, it has been documented by the Department of Homeland  
4 Security’s Office of the Inspector General,<sup>32</sup> as well as in reports by the ACLU, Human  
5 Rights Watch, Human Rights First, and Disability Rights California,<sup>33</sup> that medical care  
6 provided in ICE facilities is commonly below community standards. For instance, last year,  
7 more than 5,200 detained persons were quarantined as ICE tried to contain outbreaks of  
8 chickenpox and mumps at its detention facilities, with the CDC ultimately concluding that  
9 most of those detained persons developed the illnesses while in federal custody, not before.<sup>34</sup>  
10 Further, a recent ProPublica review of seventy reports detailing deaths from medical  
11 conditions in ICE detention over the last decade also found that staff often break strict rules  
12 for testing contagious diseases, further exacerbating the limitations of the protocols in place  
13 at these facilities.<sup>35</sup> And there is evidence that detained persons frequently lack access to  
14 bathrooms, sinks, water, soap, cleaning supplies, and other equipment that can promote  
15 good hygiene.<sup>36</sup>

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18 <sup>32</sup> Dep’t Homeland Sec. Office Inspector Gen., *ICE Does Not Fully Use Contracting Tools To Hold*

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1 necessary safeguard of life outside those facilities. Detention facilities, by their very nature,  
2 require detained persons to share close quarters, such as dining halls, bathrooms, showers,  
3 and other common areas. Further, these spaces often are poorly ventilated, which further  
4 promotes the spread of diseases. Detained persons thus are stripped of the primary weapon  
5 in the war against COVID-19 by the enforced inability to practice meaningful social  
6 distancing.

7       Hygiene-based preventative measures also are frequently ineffective in detention  
8 facilities, as detained persons typically lack access to sufficient soap and alcohol-based  
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1 suffer only from mild symptoms or be asymptomatic, that person may well be carrying and  
2 spreading the disease. Moreover, detention facilities lack the capacity to perform the kind  
3 of broad-based, systematic, and ongoing testing required to significantly lower the risk that  
4 COVID-19 will enter and spread throughout the facility.

5         These are not theoretical concerns. It is well documented that communicable diseases  
6 are far more prevalent in detention facilities than in the public as a whole.<sup>39</sup> For example, a  
7 2005 study found that, nationwide, the prevalence of HIV among incarcerated populations  
8 is ten times that of the general population, and inmates are *2,500 times* more likely to suffer  
9 from tuberculosis.<sup>40</sup> Another study found that during the H1N1-strain flu outbreak in 2009  
10 (known as the “swine flu”), jails and prisons experienced a disproportionately high number  
11 of cases.<sup>41</sup>

12         The evidence all but confirms that the same will be true of COVID-19. The recent  
13 spread of COVID-19 in New York City jails bears this out: On March 20, there were  
14 nineteen confirmed cases; on March 21, there were thirty-eight; on March 25, there were  
15 seventy-five; on March 29, there were 139; on April 3, there were 231—a more than 1,100%  
16 increase in confirmed cases in just two weeks.<sup>42</sup> Indeed, the chief doctor at Rikers Island has  
17 called the spread of COVID-19 at the prison a “public health disaster unfolding before our  
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19 <sup>39</sup> E.g. Bianca Malcolm,

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1 eyes.”<sup>43</sup> Similarly, it was recently reported that the Cook County Jail in Chicago, Illinois has  
2 emerged as the nation’s largest known source of COVID-19 infections.<sup>44</sup> Furthermore, data  
3 regarding the spread of COVID-19 in the analogous high-density living conditions of a  
4 cruise ship bolsters the risk detained persons face. A recent study of the spread of COVID-  
5 19 on the Diamond Princess cruise ship modeled the virus’s basic reproduction rate to be  
6 14.8 (rather than the already high 2.79 rate<sup>45</sup> in the ordinary population—that is, four times  
7 higher than normal), absent countermeasures such as isolation and quarantine.<sup>46</sup> And this  
8 already unfathomable rate is likely lower than what prisons and detention facilities will  
9 actually experience because the cruise ship passengers would have been able to spend most  
10 of their time alone or in small family units, use private bathrooms with access to soap, and  
11 have meals delivered.

12 **II. Any Outbreak Of The COVID-19 Virus At A Detention Facility Will**  
13 **Overwhelm And Overburden Local Health Facilities.**

14 It is imperative that .9(o)3c(v)-5.2(a)8.4(t)-4.9(e )1.8(b-3.8(e64It)3.2(i)-4.1(p)-3.9t( )1.1.8  
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1 everyone who needs them, and the U.S. hospital system would be overwhelmed.”<sup>47</sup> An  
2 overwhelmed U.S. hospital system would force medical providers to make difficult  
3 decisions as to who will receive the suddenly scarce commodity of medical care.<sup>48</sup>

4 ICE detention facilities are not hospitals. ICE detention facilities generally do not  
5 have the ability to treat the one-fifth of COVID-19 patients whose symptoms are moderate  
6 to severe.<sup>49</sup> In Wuhan, China, for instance, 15-20 percent of COVID-19 patients required  
7 not just hospitalization but also admission to intensive care, and 3.2 percent required  
8 mechanical ventilation.<sup>50</sup> ICE knows that it does not have the capacity to provide this care.  
9 That is why ICE’s own guidance provides that “ICE transports individuals with moderate  
10 to severe symptoms, or those who require higher levels of care or monitoring, to appropriate  
11 hospitals with expertise in high-risk care.”<sup>51</sup>

13 As another federal district court recently recognized, this is not a panacea because it  
14 means an outbreak in an ICE detention facility has the potential to trigger an avalanche of  
15 cases that overwhelm local health systems. In an order granting a temporary restraining  
16 order compelling the release of detained persons, a judge in the Western District of New  
17 York observed that:

18 a COVID-19 outbreak at a detention facility could result in  
19 multiple detainees—five, ten or more—being sent to the local

21 <sup>47</sup> Maria Godoy, *Flattening A Pandemic’s Curve: Why Staying Home Now Can Save Lives*, NPR (Mar.  
22 13, 2020), <https://www.npr.org/sections/health-shots/2020/03/13/815502262/flattening-a-pandemics-curve-why-staying-home-now-can-save-lives>.

23 <sup>48</sup> Ezekial J. Emanuel et al., *How The Coronavirus May Force Doctors To Decide Who Can Live And  
24 Who Dies*, (Opinion) N.Y. Times (Mar. 12, 2020),  
25 <https://www.nytimes.com/2020/03/12/opinion/coronavirus-hospital-shortage.html>.

26 <sup>49</sup> “While about 80% of cases manifest as a mild illness (i.e. non-pneumonia or mild pneumonia),  
approximately 20% progress to a more severe illness, with 6% requiring specialist medical care,  
including mechanical ventilation.” World Health Organization, *Preparedness, Prevention And Cont*

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1 community hospital where there may only be six or eight  
2 ventilators over a very short period. As they fill up and  
3 the need for the ventilators becomes acute, the ventilators become  
4 unavailable for all the usual critical illnesses. And ventilators  
5 used to treat detainees cannot be used to treat others who contract  
6 the virus.

7 *Jones v. Wolf*, No. 20-CV-361, 2020 WL 1643857, at \*13-14 (W.D.N.Y. Apr. 2, 2020)  
8 (internal quotation marks and record citations omitted).

9 This is the exact scenario described by Dr. Scott Allen and Dr. Jos0nJ(.)1.9(Y(c)8(0)-

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1 The risk of this “tinderbox” scenario at ICE detention facilities is all the more concerning  
2 because “dozens of immigration detention centers are in remote areas with limited access  
3 to health care facilities. Many facilities, because of the rural locations, have only one on-  
4 site medical provider. If that provider gets sick and requires being quarantined for at least  
5 fourteen days, the entire facility could be without any medical providers at all during a  
6 foreseeable outbreak of a rapidly infectious disease.”<sup>53</sup> So in this scenario, “many people  
7 from the detention center *and the community* die unnecessarily for want of a ventilator.”<sup>54</sup>

8 An example of this phenomenon is playing out in Illinois. Stateville Correctional  
9 Center, home to more than 4,100 inmates, has a rapidly growing outbreak of COVID-19.

10 AMITA Health St. Joseph’s Medical Center in Joliet is aati-1.9(n29.3(g)83.9( )-41.5(a)812(i)-4

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1 relief jeopardizes the lives and well-being of not just the detained persons, but of the tens  
2 of thousands of Americans living in close proximity to these facilities.

3 **CONCLUSION**

4 For the foregoing reasons, *amici curiae* respectfully request that this Court grant  
5 Plaintiffs’ motion for preliminary injunction.

6 Dated: April 9, 2020

Respectfully Submitted,

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